



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARGARET RHEE-KARN,

Plaintiff,

- against -

SUSAN CHANA LASK, ESQ., A/K/A SUSAN
LUSK, A/K/A SUSAN LESK,

Defendant.
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15-CV-9946 (RWL)

ORDER

ROBERT W. LEHRBURGER, United States Magistrate Judge.

Defendant seeks permission to file a motion on the basis that the Court lacks diversity jurisdiction in this case because at the time Plaintiff filed her complaint in 2015, she did not have a good faith basis for claiming an amount in controversy in excess of \$75,000. (See April 21, 2023 pre-motion letter at Dkt. 328.) Such a motion would be frivolous. As acknowledged long ago in Judge Preska's decision on Defendant's motion to dismiss, the damages claimed at the outset were \$315,000. (Dkt. 97.) Merely because the claims and scope of what may be recovered has been whittled down since then by summary judgment does not render the initial damages allegation as having been made in bad faith. See *Scherer v. Equitable Life Assurance Society of U.S.*, 347 F.3d 394, 397 (2d Cir. 2003) ("To overcome the face-of-the-complaint presumption, the party opposing jurisdiction must show to a legal certainty that the amount recoverable does not meet the jurisdictional threshold. Our cases have set a high bar for overcoming this presumption. The legal impossibility of recovery must be so certain as virtually to negative the plaintiff's good faith in asserting the claim. Even where the allegations leave grave doubt about the likelihood of a recovery of the requisite amount, dismissal is not warranted.") (internal

quotation marks, citations, and brackets removed); *Wolde-Meskel v. Vocational Instruction Project Community Services, Inc.*, 166 F.3d 59, 63 (2d Cir. 1999) (“Legal certainty is analyzed by what appears on the face of the complaint; subsequent events — such as a valid defense offered by the defendant, or actual recovery in an amount less than the minimum jurisdictional amount — do not show plaintiff’s bad faith or oust the jurisdiction.”) (internal quotation marks, citations, and brackets removed). Accordingly, Defendant’s request is denied.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', with a long horizontal stroke extending to the right.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: April 25, 2023
New York, New York

Copies transmitted this date to all counsel of record.